

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MARLENE KAY WILKES,)	
# 213726,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 2:09cv464- ID
)	(WO)
CYNTHIA S. WHEELER-WHITE, <i>et al.</i> ,)	
)	
Respondents.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

This case is before the court on a *pro se* 28 U.S.C. § 2254 petition for habeas corpus relief filed by Marlene Kay (“Wilkes”), an Alabama inmate incarcerated at ADOC Work Relief in Birmingham. Wilkes challenges the sentence she received for second-degree forgery convictions entered against her in February 2008 by the Circuit Court for Cullman County, Alabama, a state trial court.

DISCUSSION

This court “in the exercise of its discretion and in furtherance of justice” may transfer an application for writ of habeas corpus to “the district court for the district within which the State court was held which convicted” the petitioner. 28 U.S.C. § 2241(d). Wilkes challenges a sentence entered against her by the Circuit Court for Cullman County, Alabama. Cullman County is located within the jurisdiction of the United States District Court for the Northern District of Alabama. In light of the foregoing, this court concludes that transfer of

this case to such other court for review and disposition is appropriate.¹

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Northern District of Alabama pursuant to the provisions of 28 U.S.C. § 2241(d).

It is further

ORDERED that on or before June 10, 2009, the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d

¹Although her allegations in this regard are vague, Wilkes also appears to seek placement in a community correctional facility and to assert a cursory claim of prison overcrowding. In transferring the present case, this court makes no determination with respect to the merits of any of Wilkes's claims and deems such matters as more appropriately addressed by the United States District Court for the Northern District of Alabama. This court notes that Wilkes did not submit the \$5.00 filing fee with her petition or file a motion for leave to proceed *in forma pauperis*.

33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 28th day of May, 2009.

/s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES MAGISTRATE JUDGE